

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Roth	Team: Team # 3	CCRB Case #: 200711004	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 07/31/2007 9:00 PM	Location of Incident: East 105th Street and 2nd Avenue	Precinct: 23	18 Mo. SOL 1/31/2009	EO SOL 1/31/2009	
Date/Time CV Reported Tue, 07/31/2007 9:31 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 07/31/2007 9:31 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Terrell Anderson	03814	933551	023 PCT
2. POM Brian Moncayo	14685	939053	023 PCT
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Gregor Georgiadis	24432	936660	023 PCT
2. POM Jose Toribio	10268	932039	023 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Terrell Anderson	Abuse: PO Terrell Anderson stopped § 87(2)(b)	
B.POM Brian Moncayo	Abuse: PO Brian Moncayo stopped § 87(2)(b)	
C. An officer	Abuse: An officer frisked § 87(2)(b)	
D.POM Brian Moncayo	Abuse: PO Brian Moncayo refused to provide his name and shield number to § 87(2)(b)	
E.POM Terrell Anderson	Abuse: PO Terrell Anderson refused to provide his name and shield number to § 87(2)(b)	
F.POM Terrell Anderson	Abuse: PO Terrell Anderson searched § 87(2)(b)	

## Synopsis

On July 31, 2007, § 87(2)(b) called the CCRB and filed this complaint via the Call Processing System (encl. 3). § 87(2)(b) stated that at approximately 9:00 p.m. on the aforementioned date, he was walking in the vicinity of East 105<sup>th</sup> Street and 2<sup>nd</sup> Avenue in Manhattan when he was approached by plainclothes officers on bicycles who allegedly did not have badges displayed, and who were later identified through investigation as PO Brian Moncayo and PO Terrell Anderson. § 87(2)(b) was instructed to stop because the officers wanted to speak with him (**Allegations A and B**). § 87(2)(b) refused because he did not know what was going on, at which time PO Moncayo displayed his badge to § 87(2)(b). PO Moncayo stated that he wanted to search § 87(2)(b) and his bag. § 87(2)(b) responded that he could not, however PO Moncayo allegedly began to frisk § 87(2)(b) (**Allegation C**). PO Anderson, again informed § 87(2)(b) that he was going to be searched. § 87(2)(b) again refused and requested the officers' names, which they declined to provide to him (**Allegations D & E**). § 87(2)(b) was then asked to turn around and face the car, at which time PO Moncayo placed him in handcuffs, noting that he was doing so "for his safety." PO Anderson then reached into § 87(2)(b)'s pockets and removed the contents, and then proceeded to search the bag he was carrying as well as his waistband and sneakers (**Allegation F**). Once the search had concluded, the handcuffs were removed and § 87(2)(b) was allowed to leave the location.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

## Summary of Complaint

On August 14, 2007 the CCRB interviewed § 87(2)(b) (encl. 4). § 87(2)(b) is a § 87(2)(b)-old black male. He is 5'7, 178 pounds with black hair and dark eyes. On the date of the incident, § 87(2)(b) was wearing a black t-shirt with his company logo on it, blue jeans, a navy blue Yankee cap and white sneakers.

On July 31, 2007 at approximately 8:00 p.m. in the vicinity of 105<sup>th</sup> Street between 1<sup>st</sup> and 2<sup>nd</sup> Avenues, § 87(2)(b) was on his way home from work and walking from the train station at 103<sup>rd</sup> Street and Lexington Avenue. He had not stopped or interacted with anyone during his walk. When he approached the incident location, PO1, a Hispanic male, 5'7, 177 pounds with short dark hair, dressed in plainclothes, later identified through investigation as PO Brian Moncayo, who was riding a bicycle, told § 87(2)(b) that he wanted to speak with him and instructed him to get on the curb. § 87(2)(b) was unaware that PO Moncayo was a police officer at this time because his badge was not displayed. He stated that he would not get on the curb and believed that he was being robbed. PO Moncayo then displayed his badge and § 87(2)(b) asked why he did not show it initially. PO Moncayo then told § 87(2)(b) that he wanted to search him and his bag. § 87(2)(b) stated that he could not, and PO Moncayo responded that he should do what he says. § 87(2)(b) explained that he did not do anything, at which point PO Moncayo began to frisk § 87(2)(b). § 87(2)(b) was not complying and PO2, a light skinned black male, 5'6, 180 pounds with a short Caesar haircut, dressed in plainclothes, identified through investigation as PO Terrell Anderson, who was also riding a bicycle, approached the location and once again told § 87(2)(b) that he was going to be searched and to turn around. § 87(2)(b) reiterated that he was not going to allow the

officers to search him and he began yelling to get the attention of other pedestrians. § 87(2)(b) then asked for the officer's names and they instructed him to turn around and refused to answer him.

The officers then told § 87(2)(b) to turn around and put his hands on a car. § 87(2)(b) asked the officers why they don't stop people downtown, and they responded that it was not white people shooting each other but it was black people. PO Moncayo then placed § 87(2)(b) in handcuffs, stating that he was handcuffing him for his safety until he was finished searching him. § 87(2)(b) understood this to mean he was under arrest. § 87(2)(b) produced identification before he was handcuffed and the officers recorded the information. PO Anderson then proceeded to search § 87(2)(b) reaching inside his pockets and removing the contents, and they searched the bag that he was carrying as well. PO Anderson then searched his waistband and the inside of his sneakers. After the search was conducted, the handcuffs were removed in a twisting motion. § 87(2)(b) was allowed to leave the location when the officers did not recover any contraband.

The officers told him that they were from the precinct on 119<sup>th</sup> Street and Park Avenue. § 87(2)(b) stated that the entire incident lasted approximately 10 minutes. He stated that during the incident he was not cooperative, his voice was raised towards the officers, and he knocked away the officer's arms when they attempted to search him. Following the incident, § 87(2)(b) went to the 23<sup>rd</sup> Precinct to file a complaint regarding the incident. He spoke to a female civilian employee of the police department named "Carmen" who was nasty towards him. She instructed him to call the number on the wall.

## **Results of Investigation**

### **Attempts to ID and Locate Witnesses**

§ 87(2)(b) stated that during the incident, he was yelling to get the attention of other pedestrians. Although he indicated that there were other people on the street at the time, he was unable to specifically identify any witnesses to the incident. It was further determined that the block on which the incident took place is residential and lined with apartment buildings. There are no commercial establishments on the block and therefore a canvass for potential witnesses was not conducted.

### **Identification of Officers Interviewed**

PO Terrell Anderson prepared a Stop, Question and Frisk Report in regards to the stop of § 87(2)(b). The 23<sup>rd</sup> Precinct Roll Call for tour 3 on July 31, 2007 indicates that PO Anderson was assigned to Anti Crime along with PO Toribio, PO Gerogiadis and PO Moncayo. These four officers were therefore interviewed.

### **Police Officer Statements**

#### **PO Terrell Anderson: Stop and Frisk Report**

On August 1, 2007 [determined to be July 31, 2007] at 9:00 p.m., § 87(2)(b) was stopped on suspicion of criminal possession of a weapon at the intersection off East 105<sup>th</sup> Street and 2<sup>nd</sup> Avenue in Manhattan by PO Terrell Anderson. The Stop and Frisk Report indicates that he was observed for two minutes prior to being stopped and the stop lasted three minutes during which time he was frisked but not searched. The report indicates that officers had their hands on § 87(2)(b) and that he was handcuffed. § 87(2)(b) was not arrested or summonsed, no contraband was located, and the officers were in uniform and explained the reason for the stop. § 87(2)(b) refused to provide identification. The circumstances leading to the stop were furtive movements and a suspicious bulge which turned out to be his keys. An additional factor in the stop was an ongoing investigation. The basis for the frisk was that § 87(2)(b) was wearing inappropriate attire and possibly concealing a weapon, furtive movements, and his keys (encl. 5).

#### **PO Terrell Anderson: CCRB Statement**

On January 3, 2008 the CCRB interviewed PO Terrell Anderson of the 23<sup>rd</sup> Precinct (encl. 5). PO Anderson is a § 87(2)(b)-old black male. He is 5'11, 190 pounds with black hair and brown eyes. On July 31, 2007, PO Anderson worked from 1500 hours until 2335 hours in an Anti-Crime assignment in the

23<sup>rd</sup> precinct with PO Moncayo. He was assigned to a bicycle and was dressed in plainclothes. PO Anderson had no memo book entries regarding this incident.

PO Anderson stated that on July 31, 2007, he and PO Moncayo were riding bicycles in the vicinity of East 105<sup>th</sup> Street and Second Avenue. PO Anderson stated that there was a robbery condition in the area and they were on bikes to be more discreet. PO Anderson did not recall if they had conducted any additional stops around that same time or location on that date. At approximately 9:00 p.m., they observed an individual, identified as § 87(2)(b) walking northbound on Second Avenue while they were riding southbound on Second Avenue. When he was a couple feet away from him, PO Anderson observed that he had an L-shaped bulge in his pocket which he suspected may have been a gun. He did not observe whether § 87(2)(b) was holding a bag. The officers approached § 87(2)(b) identified themselves as police officers both verbally and by displaying their shields, at which time § 87(2)(b) became combative and stated “I don’t give a fuck.” PO Anderson stated that there was never any confusion regarding whether they were police officers. PO Anderson explained to § 87(2)(b) that he wanted to make sure that what was in his front right pants pocket was not a weapon. He never stated that he wanted to search § 87(2)(b) and his bag, and never indicated that they suspected him of anything else other than the bulge in his pocket. § 87(2)(b) grabbed his pocket and stated “If you touch me, I am going to fuck you up.” PO Moncayo then grabbed § 87(2)(b)’s wrist and § 87(2)(b) pulled away, at which time the officers were able to handcuff him without much of a struggle. Once he was handcuffed, PO Anderson informed him that he was not under arrest but that he was handcuffed for the officer’s safety because he had threatened them verbally. At that time, PO Anderson patted § 87(2)(b)’s front right pants pocket and felt that it was a hard object. He then went inside § 87(2)(b)’s pocket and removed a bunch of keys with a long key chain, which had made the L-shape in his pocket. PO Anderson stated that he did not frisk or search any other part of § 87(2)(b) other than his front right pocket, and did not remove anything from his person other than his keys. PO Moncayo did not frisk or search § 87(2)(b) at any time. Once he determined that it was keys, PO Anderson removed the handcuffs and asked § 87(2)(b) for his identification. § 87(2)(b) provided his identification, at which time he began to argue with PO Moncayo. PO Anderson prepared a UF250 and provided his badge number to § 87(2)(b) when he requested it. PO Moncayo provided his badge number to § 87(2)(b) as well, however § 87(2)(b) never asked either officer for their names.

PO Anderson explained that the UF250 indicated that the reason furtive movements was indicated as a reason for the stop was in regards to § 87(2)(b) reaching for his pocket when PO Anderson asked him if he had a weapon in his pocket. He stated that this movement escalated the level of the stop. PO Anderson explained that the ongoing investigation notation on the UF250 referred to robberies that had been taking place in the area. PO Anderson was unable to explain why he checked the “inappropriate attire” box on the UF250. PO Anderson stated that the reason he indicated on the UF250 that there was no search conducted was due to an error on his part.

#### **PO Brian Moncayo: CCRB Statement**

PO Brian Moncayo was on long-term military leave from October 2007 until March 2009. Thus, he could not be interviewed until approximately 19 months after the incident date.

On March 10, 2009 the CCRB interviewed PO Brian Moncayo of the 23<sup>rd</sup> Precinct Anti Crime team (encl. 6). PO Moncayo is a § 87(2)(b)-old Hispanic male. He is 5’11, 190 pounds with black hair and black eyes. On July 31, 2007, PO Moncayo worked from 1500 hours until 2335 hours in an anti crime assignment. He stated that he was in plainclothes, was assigned to either an unmarked vehicle or a bicycle, and had no memo book entries regarding this incident.

PO Moncayo had no recollection of stopping any individuals in the vicinity of 105<sup>th</sup> Street between 1<sup>st</sup> and 2<sup>nd</sup> Avenues at any time on July 31, 2007. He had no recollection of any stops be made on that date at any location, and did not recall ever interacting with an individual by the name of § 87(2)(b) Brach. PO Moncayo was presented with a copy of the Stop and Frisk Report prepared for § 87(2)(b) however this did not help his recollection of the incident.

#### **PO Jose Toribio: CCRB Statement**

On October 17, 2007 the CCRB interviewed PO Toribio of the 23<sup>rd</sup> Precinct (encl. 7). PO Toribio stated that on July 31, 2007, he worked 1500 hours until 2335 hours with PO Georgiadis and PO Rugo in

an Anti Crime assignment. They were assigned to unmarked RMP 661 which is an unmarked Crown Victoria. PO Toribio had no memo book entries in regards to this incident.

PO Toribio stated that at approximately 9:00 p.m. on July 31, 2007 he was at the precinct assisting PO Rugo with an arrest. He was unaware of where PO Anderson or PO Moncayo were at that time, and was unaware of any stops that they made. At no point on July 31, 2007 did PO Toribio stop anyone by the name of § 87(2)(b) nor did he execute any stops in the vicinity of East 105<sup>th</sup> Street and 2<sup>nd</sup> Avenue.

#### **PO Gregor Georgiadis: CCRB Statement**

On October 17, 2007, the CCRB interviewed PO Georgiadis of the 23<sup>rd</sup> Precinct (encl. 7). PO Georgiadis is a § 87(2)(b)-old white male. He is 5'10, 170 pounds with black hair and brown eyes. On July 31, 2007, PO Georgiadis worked from 1500 hours until 2335 in an Anti Crime assignment with PO Toribio in an unmarked black Crown Victoria, RMP 661. PO Georgiadis had no memo book entries regarding this incident.

PO Georgiadis stated that at approximately 9:30 p.m. on July 31, 2007, he was working with PO Toribio and riding in an unmarked Crown Victoria. He was unaware of where PO Anderson was at that time, though added that PO Anderson was working with PO Moncayo and may have been on bicycles. At no point on the date of the incident did PO Georgiadis stop § 87(2)(b) nor did he execute any stops in the vicinity of East 105<sup>th</sup> Street and 2<sup>nd</sup> Avenue. He was unaware of any relevant conditions in that area that would have precipitated a stop of any individuals.

#### **Police Documents**

##### **23<sup>rd</sup> Precinct Stop Question and Frisk Log**

The UF250 log for the 23<sup>rd</sup> precinct on August 1, 2007 indicates that § 87(2)(b) was stopped by PO Anderson of the 23<sup>rd</sup> Precinct for suspected criminal possession of a weapon (encl. 8).

##### **23<sup>rd</sup> Precinct Roll Call**

PO Anderson, PO Moncayo, PO Toribio, PO Georgiadis and PO Ruger were all assigned to the 23<sup>rd</sup> Precinct Anti Crime team on July 31, 2007 (encl. 9).

#### **Criminal History of Complainant**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### **CCRB History of Subject Officers**

Neither PO Anderson nor PO Moncayo has had any CCRB allegations substantiated against them during four years and three years of tenure respectively (encl. 1).

#### **CCRB History of Complainant**

This is the only complaint that § 87(2)(b) has filed at the CCRB (encl. 2).

#### **Conclusions and Recommendations**

##### **Identification of Subject Officers**

PO Terrell Anderson prepared the Stop and Frisk Report regarding the stop of § 87(2)(b). At the time of the incident, he was working with PO Brian Moncayo. § 87(2)(g)

On September 12, 2007 and September 14, 2007, § 87(2)(b) missed appointments to appear at the CCRB for a photo viewing without calling beforehand to cancel or reschedule. § 87(2)(g)

§ 87(2)(g) [REDACTED]  
[REDACTED].” § 87(2)(b) [REDACTED] alleged that he asked both officers for their names and shield numbers, and both failed to respond. § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]

### Undisputed Facts

It is undisputed that at the time of the incident, § 87(2)(b) [REDACTED] was stopped, frisked and searched by PO Anderson and PO Moncayo. It is undisputed that § 87(2)(b) [REDACTED] was not cooperated during the stop and was handcuffed.

### Disputed Facts

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

### Assessment of Evidence

Upon observing the bulge in § 87(2)(b) [REDACTED]’s pocket and indicating to him why he was being stopped, § 87(2)(b) [REDACTED] by his own candid admission, became uncooperative and combative. § 87(2)(b) [REDACTED] stated that he was unsure what was going on at the time of the incident because the officers had failed to identify themselves as police officers, and he was afraid that he was going to be robbed. He further alleged that when he requested the officers’ names and badge numbers, they failed to provide them. Conversely, PO Anderson stated that § 87(2)(b) [REDACTED] requested their badge numbers, which they provided, but never requested their names. § 87(2)(g) [REDACTED]  
[REDACTED]

§ 87(2)(g) [REDACTED]  
§ 87(2)(b) [REDACTED] alleged that PO Moncayo frisked him before he was cuffed and PO Anderson only admitted to frisking the area where he observed the bulge after § 87(2)(b) [REDACTED] was handcuffed. § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(2)(b) [REDACTED] alleged that upon being handcuffed, PO Anderson conducted a full search of his person including his waistband area and inside his sneakers. PO Anderson admitted to searching him, however stated that the extent of the search was reaching into the one pocket where he observed the bulge. The Stop and Frisk Report indicated that § 87(2)(b) [REDACTED] was not searched, and when questioned, PO Anderson attributed this to his own error. § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### Allegations not pleaded

During his initial statement, § 87(2)(b) [REDACTED] alleged that he was “slammed” into a parked car and roughly handcuffed. § 87(2)(b) [REDACTED] did not mention these allegations during his official statement they have therefore not been pleaded. § 87(2)(b) [REDACTED] also alleged during his initial statement that he had a previous interaction with the same subject officers involved in this case. Because he failed to mention this previous interaction during subsequent statements, allegations have not been pleaded in regards.

**Allegation A: PO Terrell Anderson stopped § 87(2)(b) [REDACTED]**

**Allegation B: PO Brian Moncayo stopped § 87(2)(b) [REDACTED]**

It is undisputed that at the time of the incident, § 87(2)(b) was stopped and frisked by PO Moncayo and PO Anderson. Although § 87(2)(b) alleged that he was initially approached by, and interacted with PO Moncayo, PO Anderson stated that both he and PO Moncayo stopped § 87(2)(b) concurrently, and immediately identified themselves as police officers. PO Anderson stated that at the time of the incident, he observed § 87(2)(b) in a robbery-prone area and when he was within a couple of feet of him, observed an L-shaped bulge in § 87(2)(b)'s pocket. The Stop and Frisk Report is consistent with this explanation, however contains other explanations for the stop that PO Anderson was unable to explain when questioned, such as the fact that § 87(2)(b) was wearing "inappropriate attire, possibly concealing a weapon." § 87(2)(g)

Barry Kamins Search and Seizure states that "Aside from the area of the waistband, bulges normally will be observed in pants pockets...If the bulge is in these areas, a frisk is not permitted unless a gun is identifiable by its outline" (encl. 0). § 87(2)(g)

**Allegation C: An officer frisked § 87(2)(b)**

§ 87(2)(b) alleged that when PO Moncayo initially approached him, he frisked him before PO Anderson arrived at the location. PO Anderson however, stated that he was the officer who frisked § 87(2)(b) and at no time did PO Moncayo frisk him. PO Moncayo had no recollection of the incident. § 87(2)(g)

**Allegation D: PO Brian Moncayo refused to provide his name and shield number to § 87(2)(b)**

**Allegation E: PO Terrell Anderson refused to provide his name and shield number to § 87(2)(b)**

§ 87(2)(g)

**Allegation F: PO Terrell Anderson searched § 87(2)(b)**

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: